

INCOME TAX REFERENCE No 181 of 1985

Hon'ble CHIEF JUSTICE MR DM DHARMADHIKARI
and
Hon'ble MR.JUSTICE A.R.DAVE

Date of decision: 21/09/2000

ORAL JUDGEMENT

(per D.M. Dharmadhikari, C.J.)

In this reference under sec. 256(1) of the Income-tax Act, 1961, at the instance of the revenue, for the assessee's case for the A.Y. 1980-81, the following question of law, on the method of computation of relief under sec. 80M read with sec. 80K of the Income-tax Act, has been referred for opinion :

"Whether the Appellate Tribunal has been right in law in holding that the assessee was entitled to relief under sec. 80M of the Income-tax Act and that such relief was required to be computed without deducting the amount deductible under sec. 80K of the Income-tax Act, 1961 from the gross dividend income of the assessee?"

2. It has been brought to our notice that the Division Bench of this Court in CIT. Sarabhai & Sons reported in (1995) 211 ITR 20 have answered similar question squarely against the assessee and in favour of the revenue by holding thus :

"Further, Considering the purpose of two sub-sections, in our view, there is no justification for holding that the concept of net or gross dividend should have anything to do with the matter for reducing the quantum of dividend income for granting the benefit under section 80M. The language of sec. 80AA and sub-sections (1) and (2) of section 80M is also clear. There is no ambiguity nor was section 80AA inserted to give a different meaning to section 80M so as to make sub-section (2) of section 80M otiose or redundant. The non obstante clause "notwithstanding anything contained in this section" used in section 80AA is connected only with regard to the computation of deduction by taking into consideration the income by way of such dividends as computed in accordance with the provisions of the Income-tax Act before making any deduction under Chapter VI and it does not deal with any other aspect. Further, the Legislature never intended to grant double relief i.e. 100 per cent relief under section 80K and again second relief either 100 per cent or 60 per cent, as the case may be, under section 80M(1). If the contention of the assessee is accepted,

then it would mean that the assessee would get deduction under section 80M(1) as well as under section 80K on the same amount of dividend income. However, in this context, learned counsel Mr. Mehta, submitted that the Legislature has specifically used the phrase "before making any deduction under this Chapter" mentioned in brackets to indicate that section 80M(1) is to be operated without making any deduction including the deductions as provided in section 80M(2). In our view, this submission is also misconceived because the bracketed portion only clarifies what is meant by "the income by way of such dividends as computed in accordance with the provisions of this Act." The said phrase is not used for governing the entire section 80M or for making sub-section (2) nugatory. In this view of the matter, we hold that, for working out the deduction under section 80M(1) of the Act, the net dividend income after reducing the quantum of dividend income further on account of relief admissible under section 80K of the Act is to be taken into consideration.

In the result, the questions in all the references are answered in favour of the Revenue and against the assessee by holding that, in computing deductions allowable under sub-section (1) of section 80M, the net dividend income should be reduced by the deductions allowable to the assessee under section 80K, as provided in sub-section (2) of section 80M. "

3. Similar question having been answered in favour of the revenue and against the assessee in the case of Sarabhai & Sons (supra), with which we find ourselves in respectful agreement, the present reference has also to be answered in favour of the revenue and against the assessee.

The reference stands disposed of accordingly. In the circumstances, however, we make no order as to costs.

(D.M. Dharmadhikari, C.J.)

(A.R. Dave, J.)

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